

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 PM-03 H-01

INR-05 L-02 NSAE-00 NSC-05 PA-01 RSC-01 PRS-01 SP-02

SS-15 USIA-06 IO-10 ACDA-05 SAJ-01 /071 W

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P R 111736Z NOV 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 6184

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

AMEMBASSY MOSCOW

AMEMBASSY LONDON

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 17653

E.O. 11652: GDS

TAGS: PFOR, UR, BW, GW, US, UK, FR

SUBJECT: SOVIET PROTEST ON EXTENSION TO BERLIN OF LAW
ON INNER-GERMAN COOPERATION IN CRIMINAL
MATTERS (BRUECKMANN)

REF: MOSCOW 16370

1. BONN GROUP REACHED NOV 8 AD REF AGREEMENT ON TEXT OF
REPLY TO SOVIET ORAL STATEMENT. TEXT SETS OUT IN
STRAIGHT-FORWARD MANNER FACTS RELATING TO BUNDESGE-
RICHTSHOF'S (BGH) LONG-STANDING COMPETENCE IN BERLIN
CASES, PARTICULARLY EMPHASIZING POINTS THAT PRESENT LAW
DOES NOT ALTER NATURE OF THIS COMPETENCE AND THAT BGH
ACTS WITH RESPECT TO BERLIN ON BASIS 1951 BERLIN LAW
PROVIDING GENERAL COMPETENCE COUPLED WITH SUBSEQUENT
BERLIN LAWS PROVIDING FOR ACTUAL EXERCISE OF THIS COMPE-
TENCE IN SPECIFIC TYPES OF BERLIN CASES. RECOMMEND
DEPARTMENT APPROVE TEXT FOR DELIVERY AS ORAL STATEMENT
IN MOSCOW ON LEVEL CORRESPONDING TO THAT AT WHICH SOVIET
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STATEMENT MADE.

2. BEGIN TEXT: WITH REFERENCE TO YOUR COMMUNICATION OF 25 OCTOBER 1974, I HAVE BEEN INSTRUCTED BY MY AUTHORITIES TO STATE THE FOLLOWING:

A. IN 1951 THE THREE WESTERN POWERS, IN EXERCISE OF THEIR SUPREME AUTHORITY IN THE WESTERN SECTORS OF BERLIN, APPROVED THE ENTRY INTO FORCE IN BERLIN OF A LAW ENACTED BY THE BERLIN HOUSE OF REPRESENTATIVES WHICH ESTABLISHED THE COMPETENCE OF THE BUNDESGERICHTSHOF TO DEAL WITH BERLIN CASES.

B. SINCE THAT TIME, THE BERLIN HOUSE OF REPRESENTATIVES HAS ADOPTED IN BERLIN, WITH THE AUTHORITY OF THE THREE POWERS, A NUMBER OF LAWS WHICH SPECIFIED THE CONDITIONS UNDER WHICH THE BUNDESGERICHTSHOF EXERCISES ITS COMPETENCE UNDER THE 1951 LAW.

C. THE ALLIED KOMMANDATURA DECIDED MANY YEARS AGO THAT THE BUNDESGERICHTSHOF COULD EXERCISE ITS COMPETENCE WITH RESPECT TO BERLIN ONLY IN THOSE CASES ARISING UNDER LAW IN FORCE IN BERLIN WHICH ALLOWS FOR SUCH EXERCISE. AT THE SAME TIME IT WAS DETERMINED THAT THE BUNDESGERICHTSHOF, WHEN EXERCISING ITS COMPETENCE REFERRED TO, MAY APPLY ONLY THE LAW IN FORCE IN BERLIN. FURTHERMORE, THE ALLIED KOMMANDATURA HAS TAKEN INTO ACCOUNT THE FACT THAT DECISIONS OF THE BUNDESGERICHTSHOF IN ANY CASES ARISING IN BERLIN HAVE A BINDING EFFECT ONLY FOR EACH PARTICULAR CASE.

D. THE PRESENT AMENDMENT TO THE 1953 LAW ON INNER-GERMAN LEGAL ASSISTANCE IN CRIMINAL MATTERS, WHICH WAS ADOPTED IN THE WESTERN SECTORS OF BERLIN BY MANTELGESETZ IN ACCORDANCE WITH ESTABLISHED PROCEDURES, DOES NOT ALTER THE NATURE OF THE EXISTING COMPETENCE OF THE BUNDESGERICHTSHOF BUT BRINGS THE 1953 LAW INTO CONFORMITY WITH GENERAL PRINCIPLES OF CRIMINAL LAW IN FORCE IN THE WSB.

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 17653

E. IN ACCORDANCE WITH THEIR LONG STANDING PRACTICE THE THREE POWERS, WHEN AUTHORISING THE ADOPTION IN BERLIN OF THE PRESENT AMENDMENT TO THE 1953 LAW, ENSURED THAT IT WOULD BE APPLIED SUBJECT TO THEIR SUPREME AUTHORITY AND IN SUCH A WAY THAT IT DOES NOT CONFLICT WITH THE FACT THAT THE WSB CONTINUE NOT TO BE A CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND NOT TO BE GOVERNED BY IT. IN PARTICULAR, THE ALLIED KOMMANDATURA RESERVED ITS RIGHT TO TAKE WHATEVER MEASURES IT DEEMED NECESSARY SHOULD ANY DECISION OF THE BUNDESGERICHTSHOF UNDER THE PROVISIONS OF THE PRESENT AMENDMENT NOT BE IN ACCORDANCE WITH ALLIED ORDERS AND DIRECTIVES.

F. IT IS THEREFORE INCORRECT TO ASSERT THAT THE BUNDESGERICHTSHOF, ACTING UNDER THE PROVISIONS OF THE PRESENT AMENDMENT TO THE 1953 LAW AND OTHER BERLIN LAWS WHICH CONCERN ITS COMPETENCE, COULD PERFORM ACTS IN THE EXERCISE OF DIRECT STATE AUTHORITY OVER THE WSB.

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G. THE THREE POWERS TAKE THIS OPPORTUNITY TO REITERATE THAT, LIKE THE GOVERNMENT OF THE SOVIET UNION, THEY ATTACH IMPORTANCE TO THE STRICT OBSERVANCE AND FULL APPLICATION OF THE QUADRIpartite AGREEMENT OF 3 SEPTEMBER 1971. IN THIS CONNECTION, THEY DO NOT ACCEPT THE SOVIET CONTENTION THAT ANY ONE PROVISION OF THE QUADRIpartite AGREEMENT IS MORE FUNDAMENTAL THAN OTHERS.

H. AS FAR AS THE UTILISATION OF CERTAIN TERMINOLOGY IN LEGISLATION OF THE FEDERAL REPUBLIC IS CONCERNED, THE THREE POWERS CONFIRM THEIR POSITION AS SET OUT IN THEIR COMMUNICATIONS OF 22 FEBRUARY 1973. END TEXT.

HILLENBRAND

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